



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/07674/2019
& HU/07678/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 13 December 2021
Extempore**

**Decision & Reasons Promulgated
On 25 January 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MRS SUKAI MANGA ADESINA
MISS ADEBISI RAHMAT ADESINA
(NO ANONYMITY DIRECTION)**

Appellants

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

Representation:

For the Appellants: No attendance

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by the Entry Clearance Officer to refuse entry clearance to the respondents to join Mr Olatunde Adesina ("the sponsor"), husband of the first appellant and father of the second appellant. Their appeal was initially allowed by First-tier Tribunal Judge Obhi in a decision promulgated on 10 January 2020. That decision was for

the reasons set out in my decision of 18 November 2020 set aside. A copy of that decision is attached.

2. In essence, the judge found that all the requirements of the Immigration Rules were met save for evidence demonstrating that the proposed accommodation was adequate. The judge stated that she intended to allow the appeal but that the Secretary of State must be provided with evidence in relation to both of the points set out in paragraph 25 and the appeal was allowed subject to the appellants providing evidence in relation to accommodation. For the reasons set out in my decision, that decision clearly involved the making of an error of law and I concluded that the matter needed to be remade, the issue relating solely to the adequacy of the accommodation available.
3. Subsequent to my decision, the High Court handed down its decision in JCWI v President of the Upper Tribunal [2020] EWHC 3103. The appellants then sought, it appears, to challenge my decision of 18 November 2020 by way of an application for judicial review which does not appear to have been properly filed; the application is not sealed. Appended to that application were a number of documents relating to the accommodation which it is intended to occupy.
4. The file, including the judicial review application, was put before me to consider whether or not to set aside my decision of 18 November 2020. On 19 October 2021 I issued a decision explaining why I was not going to set aside my decision and giving directions as to how this matter should proceed.
5. In that decision I recorded that there were now before me documents relevant to the question of whether the accommodation available to Mr and Mrs Adesina and their family including tenancy agreements, letters from the landlords and a copy of the tenancy agreement and a plan of the property giving dimensions. I directed these to be served on the Home Office. This does not appear to have been done.
6. When this appeal came before me today there was no appearance by the sponsor nor indeed any explanation for their failure to attend. I was, however, satisfied that in the particular circumstances of this case, given the narrowness of the issue and the documents which have already been served, that it would be in the interest to proceed to determine the appeal without the need for the appellants' sponsor to give evidence.
7. The sole issue of concern in this case is whether the accommodation available is adequate in the terms of the Immigration Rules for the appellants and the sponsor and family to live. The material provided to me in the form of a sketch of the premises giving the dimensions indicates that there is a three bedrooms the smallest of which is 190 by 250 centimetres, which is 51.29 square feet. The other rooms are bigger. There is also a seating room available.

8. Having had due regard to the policy which the Home Office maintains relating to adequacy of accommodation which in turn is based on the overcrowding provisions set out in the Housing Act 1986 and bearing in mind the sexes of those who will be living in the bedrooms apart from the first appellant and her husband in the biggest bedroom and the sizes of the rooms, I am satisfied on the balance of probabilities that these meet the requirements in relation to overcrowding.
9. A further issue in respect of adequacy of accommodation is whether the accommodation is in fact available to them. The copy assured shorthold tenancy agreement provided is dated 28 November 2019 and is for the term of a year from 8 December 2019. That is after the date of decision but I note also that it is to all intents and purposes a continuation of a tenancy agreement by the same landlord and the same tenant over the same property as that provided to the Entry Clearance Officer and as appears in the appellants' bundle. There are also two copy letters from the landlord's agents, Sheet Anchor, the first dated 16 January 2020 confirming that the assured shorthold tenancy had been renewed, that the flat has three bedrooms and should be sufficient accommodation for the sponsor and his three children to occupy the flat, with the wife.
10. There is a further letter of 4 January 2021 stating that the tenancy which was to expire on 7 December 2020 has continued and is being held over under the rights allowed under the assured shorthold tenancy and it is intended to renew it in due course. The adequacy of the accommodation is confirmed.
11. I share the concerns of Mr Lindsay on behalf of the Entry Clearance Officer that there has been no attendance by the sponsor for him to confirm the situation and to answer any questions there might be but, bearing in mind the earlier positive findings by Judge Obhi and bearing in mind that the documents appear consistent with the documents which have already been provided and found to be reliable and taken into evidence by Judge Obhi, I am satisfied on the balance of probabilities firstly that the accommodation meets the adequacy arrangements in terms that it is of such a size and the rooms are available such that there will not be overcrowding for the purposes of the Housing Act 1986 on either view and I accept also that the accommodation continued to be available as at the date of the decision of the Entry Clearance Officer and certainly it would appear to have been available certainly as late as 4 January 2021.
12. In the circumstances, I am satisfied that as at the date of decision adequate accommodation was available for the family and as a result that in light of the findings made by Judge Obhi that all the requirements of the Immigration Rules were met. On that basis, there would be no proper basis on which there was a public interest in refusing entry clearance and thus the appeal falls to be allowed on Article 8 grounds.
13. I do, however, add a warning to the appellants. Given the length of time that has now elapsed, it is very much in their interests to have up-to-date

evidence of available accommodation in the form of a tenancy agreement, confirmation of the adequacy from the landlord's agent as this will need to be shown to the Entry Clearance Officer before any visa is granted in order to make sure that there has been no change of circumstances since the date of decision.

Notice of Decision

14. Accordingly, for these reasons, I allow the appeal:

- (1) The decision of the First-tier Tribunal involved the making of an error of law and it is set aside.
- (2) I remake the decision by allowing the appeal, albeit for different reasons.

No anonymity direction has been made nor has it been suggested at any point that it should be made or is necessary and I am not satisfied that I should make an anonymity order.

Signed

Date 21 December 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/07674/2019
& HU/07678/2019

THE IMMIGRATION ACTS

**Decided under Rule 34 Without a Hearing
At Field House
On 29 September 2020**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

ENTRY CLEARANCE OFFICER (SHEFFIELD)

Appellant

and

**ADEBISI RAHMAT ADESIN
SUKAI MAGA ADESINA
(NO ANONYMITY DIRECTION MADE)**

Respondents

DECISION AND REASONS

15. The Entry Clearance Officer appeals with permission against the decisions of First-tier Tribunal Judge M K Obhi promulgated on 10 January 2020 in which she allowed the respondents' appeals against the decisions made on 24 April 2019 to the decisions of the appellant made to refuse them leave to enter the United Kingdom. The respondents are respectively mother and daughter and had sought entry to join Mr Olatunde Adesina the husband of the first respondent ("the sponsor") and father of the second respondent.

16. The appellant refused the applications as he did not accept that the first respondent and the sponsor were in a genuine and subsisting marriage nor was he satisfied that the second respondent was related to either the first respondent or sponsor as claimed.
17. The appellant concluded that the respondents had not met the financial eligibility requirements set out in E-ECP 3.1 to 3.4 of Appendix FM as the required documents had not been submitted; and, was not satisfied that there would be adequate accommodation available without to recourse to public funds, given the lack of evidence that it would not be overcrowded.
18. On appeal, the judge found that:
 - (i) After the filing of further evidence, the appellant had been satisfied that there was adequate financial maintenance for the respondents, and so this was no longer in issue [21];
 - (ii) the first respondent and the sponsor are lawfully married and are in a genuine and subsisting relationship [23,24];
 - (iii) the sponsor had not provided confirmation from the landlord that he is aware that he has four children and that the accommodation is adequate, nor a report from an estate agent to that effect;
 - (iv) the Immigration Rules require an ECO to be satisfied in all respects and that “the requirements to accommodation are specified”
19. The judge concluded:

“29. I therefore intend to allow this appeal but the [respondents] must provide evidence in relation to both of the points which are set out in paragraph 25 as it is unlikely that the ECO will grant them permission to enter without this evidence”
20. And then allowed the appeal on article 8 grounds “subject to them providing evidence in relation to accommodation”
21. The appellant sought permission to appeal on the grounds that the judge had erred in law :
 - (i) The respondents had not met all the requirements of the Immigration Rules;
 - (ii) On that basis the principles in TZ(Pakistan) and PG (India) [2018] EWCA Civ 1109 did not apply; and therefore,
 - (iii) The conclusion that refusal of entry clearance was disproportionate was defective.
22. On 1 April 2020 first-tier Tribunal Judge Mark Davies granted permission on all grounds.

23. On 30 July 2020 Upper Tribunal Judge Blum also made directions in this case stating:
1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so
 - (b) whether that decision should be set aside.
 2. I therefore make the following DIRECTIONS:
 - (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);
 - (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;
 - (iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.
 - (iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.
 3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case.
 4. If this Tribunal decides to set aside the decision of the First-tier Tribunal for error of law, further directions will accompany the notice of that decision.
 5. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

24. Neither the appellant nor the respondent have replied to the direction or made submissions explaining why these appeals cannot be determined without a hearing.
25. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Given that no objection to this course of action has been raised, and bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, I am satisfied that in the particular circumstances of this case where no objection to a decision being made in the absence of a hearing that it would be right to do so.
26. As regards adequacy of accommodation, the Immigration Rules provide in Appendix FM as follows:

E-ECP.3.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

 - (a) it is, or will be, overcrowded; or
 - (b) it contravenes public health regulations.
27. What that evidence is to be is not, unlike the evidence of financial means, specified in Appendix FM-SE which the judge appears at [27] to be the case.
28. The law in relation to the adequacy of accommodation requires it be occupied exclusively (even if only one room) by the family or household (see KJ ("Own or occupy exclusively") Jamaica [2008] UKAIT 00006) and it must not be "overcrowded." That is a complex issue usually assessed by starting with whether the number of occupants would exceed Housing Act 1985 limits. (See "Home Office Guidance: Family Migration: Appendix FM Section 1.7A-Adequate maintenance and accommodation at p23ff).
29. The judge considered the issue of overcrowding, albeit without reference to any standard, and concluded that, on the evidence, she was not satisfied that the accommodation would not be overcrowded. That was a decision clearly open to her on the evidence.
30. What the judge could not do was, in effect, allow the appeal on a conditional basis that additional documents could be provided. While it would in theory have been open to the judge to allow the appeal on an article 8 basis if not all the requirements of the rules were met, there is simply not enough reasoning on that point.
31. In the light of that, the decision did involve the making of an error of law which affected the outcome.

32. Accordingly, I conclude that the decision of the First-tier Tribunal involved the making of an error of law. I therefore set it aside to be remade in the Upper Tribunal on the narrow ground of whether there is adequate evidence of the accommodation available; and, if not, whether the appeal should nonetheless be allowed.

Notice of Decision & Directions

- 1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I direct that the decision be remade in the Upper Tribunal on a date to be fixed in a face-to-face hearing.
- 3 In this case, the issue is narrow, and the Upper Tribunal would be greatly assisted by an estate agent's report or particulars as to the accommodation available, and with submissions directed towards the issues identified in "Home Office Guidance: Family Migration: Appendix FM Section 1.7A-Adequate maintenance and accommodation" in respect of the sections on overcrowding.
- 4 Any party wishing to adduce further evidence must make an application pursuant to rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 at least 10 working days before the hearing.

Signed

Date 29 September 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul